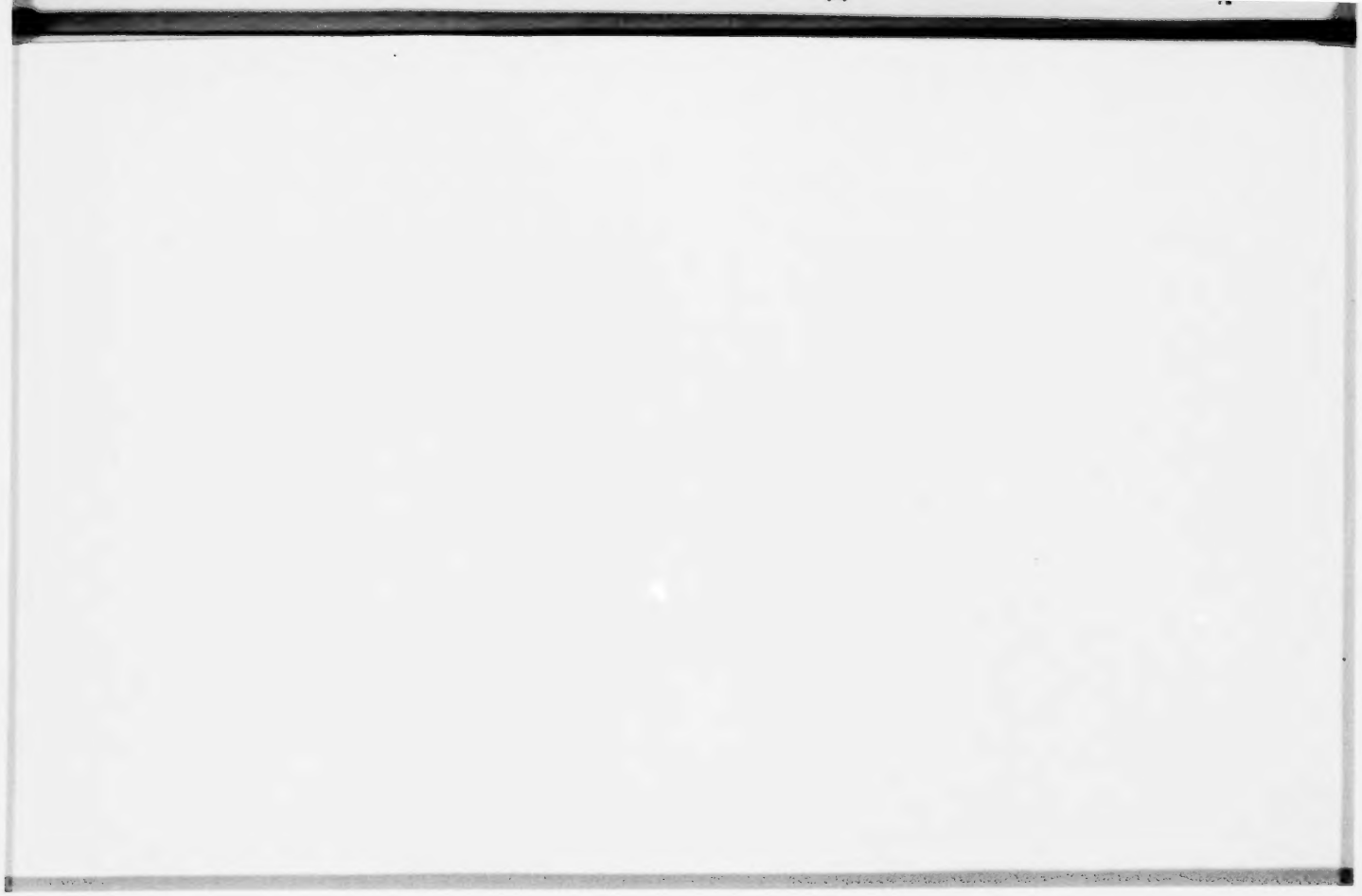

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1944.

No. 336

IN THE MATTER OF

THOMAS V. NOVOTNY, SR.,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS, EX REL. THE CHICAGO BAR ASSOCIATION, ET AL.,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

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1.

The opinion below is reported in 386 Illinois Supreme Court Reports at p. 536.

2.

Jurisdiction.

The jurisdiction of this Court if exercised may be invoked under Section 237 (b) of the Judicial Code as amended by the Act of February 13, 1925 (Section 344, Title 28, U. S. C. A.).

3.

Questions Presented.

The questions presented are:

(1) Has the petitioner set up any title, right, privilege or immunity under the Federal Constitution?

An inspection of the record shows that the petitioner in the court below raised no question under the Federal Constitution. His answer (Record, pp. 10-17) is completely devoid of any tender of an issue involving the Federal Constitution. His petition for rehearing (Record, p. 47) refers to Stern on Constitutional Law (1882), p. 121, but does not contain a quotation from the volume, and no mention of the Federal Constitution or any of the amendments is contained either in the answer or the petition for rehearing. Constitutional questions are first raised in the petition for certiorari filed herein.

The petitioner cannot raise federal questions here, when he did not raise them in the Supreme Court of Illinois.

Hulbert v. *Chicago*, 202 U. S. 275, 50 L. Ed. 1026.

(2) Did the decision of the Supreme Court violate the Fifth, Seventh and Eighth Amendments to the Federal Constitution?

These amendments to the Constitution, as has been repeatedly decided, do not limit the power of the states.

See, as to the Fifth Amendment:

Palko v. *Connecticut*, 302 U. S. 319, p. 322, 82 L. Ed. 288, p. 290.

As to the Seventh Amendment:

Ohio v. *Dollison*, 194 U. S. 445, 48 L. Ed. 1062.

Minneapolis and St. Louis Railroad Co. v. *Bombolis*, 241 U. S. 211, p. 217, 60 L. Ed. 961, p. 963.

And, as to the Eighth Amendment:

Collins v. *Johnston*, 237 U. S. 501, pp. 510-511, 59 L. Ed. 1071, p. 1079.

Ughbanks v. *Armstrong*, 208 U. S. 481, 52 L. Ed. 582.

These are the only constitutional provisions referred to in the petition for writ of certiorari (see petition, p. 8, "The Contested Issues," pp. 10-11, "Brief in Support of Petition for Writ of Certiorari," and pp. 12-21, "Argument").

(3) Will the Supreme Court of the United States take jurisdiction over a judgment involving a question peculiarily of state law?

The petitioner's answer admitted that his name did not appear on the roll of attorneys (Transcript of Record, p. 11).

Novotny was adjudicated guilty of contempt by the Supreme Court of Illinois because he was engaged in the practice of law without being licensed. The Supreme Court of Illinois has heretofore in various cases taken action and punished those guilty of the unauthorized practice of law.

See:

People v. *Goodman*, 366 Ill. 346.

People v. *Chicago Motor Club*, 362 Ill. 50.

People v. *Motorists Association*, 354 Ill. 595.

People v. *Real Estate Taxpayers*, 354 Ill. 102.

People v. *People's Stock Yards State Bank*, 344 Ill. 462.

The Supreme Court of the United States has already passed upon the right of the state to exclude women from the practice of the law.

See:

Bradwell v. *Illinois*, 16 Wall. 130, 21 L. Ed. 442.

Ex Parte Lockwood, 154 U. S. 116, 38 L. Ed. 929.

In *Bradwell* v. *Illinois*, it is held that the right to control and regulate the granting of licenses to practice law by the courts of the states is one of those powers which is not transferred for its protection to the Federal Government.

This Court has denied certiorari in a case involving punishment for contempt for the unauthorized practice of law where a federal question under the Fourteenth Amendment was raised by the petitioner, in *People* v. *Goodman*, 366 Ill. 346, *supra*. (See *Goodman* v. *People of the State of Illinois ex rel. Chicago Bar Association*, 302 U. S. 728, 82 L. Ed. 562.)

STATEMENT.

A motion for leave to file an information was presented to the Supreme Court of Illinois on November 13, 1943. Together with the motion there was presented the information (Record, pp. 1-9) and there were also filed certain suggestions (Record, pp. 9-10) in support thereof. From the information it clearly appears that the petitioner was practicing law openly in the City of Chicago, County of Cook and State of Illinois, and held himself out to be a lawyer, with law offices at 82 West Washington Street, Chicago. It is alleged that Novotny was not admitted or licensed to practice law in the state, that an application to have his name placed upon the roll of attorneys was denied at the January, 1943, term of the Supreme Court of Illinois. Petitioner in his answer admitted that his application to have his name enrolled on the roll of attorneys was denied, and that his name did not appear upon the roll of attorneys of the Supreme Court of Illinois. He claimed the right to practice law in spite of this fact and contended that he actually had been admitted to the practice of law in 1912. In further exculpation, his answer set forth that there had been a criminal proceeding brought against petitioner for practicing law without having a license, in the year 1929, and that the jury found him not guilty. His answer and exhibits and suggestions attached thereto are contained in the Record, pp. 10-27.

ARGUMENT.

I.

The Petitioner Has Not Set Up Any Title, Right, Privilege or Immunity Under the Federal Constitution.

At no time, in either his answer or his petition for rehearing in the court below, did the petitioner contend that any part of the Federal Constitution was violated. The so-called constitutional questions urged by the petitioner are now first raised by the petition filed herein.

The Judicial Code, Section 237 (b) as amended (Section 344, Title 28, U. S. C. A.), clearly provides that it shall be competent for the Supreme Court of the United States by certiorari to certify for review and determination any cause wherein a final judgment or decree has been rendered or passed by the highest court of a state in which a decision could be had, where "any title, right, privilege, or immunity is specially set up or claimed by either party under the Constitution." There being no such right set up or claimed, there is nothing for this Court to review.

In *Hulbert* v. *Chicago*, 202 U. S. 275, 50 L. Ed. 1026, the Court held that the plaintiff had failed to comply with the statutory provision in setting up a right under the Constitution of the United States; that there was no evidence in the record to show that the decision of either the trial court or the Supreme Court of Illinois, whose judgment was questioned, was invoked by plaintiff in error upon a right claimed under the Constitution of the United States. The writ of error was therefore dismissed. This rule is so elementary and of such long standing that no further discussion of the issues involved would seem necessary.

II.

The Decision of the Supreme Court of Illinois Does Not and Cannot Violate the Fifth, Seventh and Eighth Amendments to the Federal Constitution.

In *Palko* v. *Connecticut*, 302 U. S. 319, p. 322, 82 L. Ed. 288, p. 290, the Court held that the Fifth Amendment is not directed to the states but solely to the Federal Government.

In *Ohio* v. *Dollison*, 194 U. S. 445, 48 L. Ed. 1062, the Court held that it is well established that the first eight Articles of the Amendments to the Constitution of the United States have reference to powers exercised by the government of the United States and not to those of the states.

In *Minneapolis and St. Louis Railroad Co.* v. *Bombolis*, 241 U. S. 211, p. 217, 60 L. Ed. 961, p. 963, the Court held that the first ten Amendments are not concerned with state action and deal only with federal action, that the Seventh Amendment applies only to proceedings in the courts of the United States and does not in any manner whatever govern or regulate trials by jury in state courts, that so completely and conclusively have both of these principles been settled, that to grant that they are open to contention would be to grant that nothing whatever had been settled as to the power of state and federal governments or the authority of state and federal courts in their mode of procedure from the beginning.

In *Collins* v. *Johnston*, 237 U. S. 501, 59 L. Ed. 1071, the Court specifically stated that the Eighth Amendment is a limitation upon the Federal Government and not upon the states.

See also *Ughbanks* v. *Armstrong*, 208 U. S. 481, 52 L. Ed. 582.

III.

The Question Involved Is One Peculiarly of State Law.

The petitioner does not claim that his name appears on the roll of attorneys. He was adjudicated guilty of contempt by the Supreme Court of Illinois because he was engaged in the practice of law without a license. In the early case *In re Day*, 181 Ill. 73, it was held that to regulate and define the practice of the law was the prerogative of the judicial department under the Constitution of the State of Illinois. The Supreme Court of Illinois has repeatedly punished for contempt laymen or lay agencies engaged in the practice of law in defiance of the requirements necessary therefor as announced by the Supreme Court. These decisions appear in *People* v. *Goodman*, 366 Ill. 346; *People* v. *Chicago Motor Club*, 362 Ill. 50; *People* v. *Motorists Association*, 354 Ill. 595; *People* v. *Real Estate Taxpayers*, 354 Ill. 102, and *People* v. *People's Stock Yards State Bank*, 344 Ill. 462.

The Supreme Court of Illinois has promulgated elaborate rules (see: Rules 58 and 59) covering admission to the Bar and proceedings to discipline attorneys. The regulations of the Supreme Court of Illinois would be set at naught if a layman could practice law in defiance of these provisions.

The petitioner here, however, claims that he is not a layman, but that although his name does not appear on the roll of attorneys, he actually was admitted to practice, having received a certificate from the Clerk of the Court, in 1912. The Court in its opinion (Record, p. 31), in response to this contention, refers to Section 5 of the act relating to attorneys and counselors in the Illinois Revised Statutes, which states in effect that no person whose name is not on the roll shall be admitted to practice as an attorney in any court of record; that the practice before the

enactment of the statute required, as the statute now in force does, enrollment as the proof of the right to engage in the practice of law; that the provision requiring enrollment is not only for the purpose of making it the proof of admission to practice, but also to prevent frauds by the existence of fictitious certificates; that to permit the Clerk's certificate to constitute proof of admission might lead to fraud, but enrollment would foreclose such a possibility and is therefore made the test.

This Court, in *Bradwell* v. *Illinois*, 16 Wall. 130, 21 L. Ed. 442, and *Ex Parte Lockwood*, 154 U. S. 116, 38 L. Ed. 929, has held that the right to regulate and control the licensing to practice law in the courts of the state does not involve a Federal matter.

Conclusion.

In conclusion, it is respectfully submitted that the petition for certiorari herein falls far short of complying with the principles contained in Rule 38, par. 5 (a), of this Court, to the effect that certiorari may issue where a state court has decided a federal question of substance not theretofore decided by this Court, or has decided it in a way probably not in accord with decisions of this Court.

The petitioner has not even approached the threshold of jurisdiction. He has raised no federal question of substance or otherwise. It is respectfully submitted that the prayer for writ of certiorari should be denied.

Respectfully submitted,

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